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# Final Report of the 2007 British Columbia Judges Compensation Commission

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Report to the Attorney General of British Columbia
and the Chief Judge of the Provincial Court of British Columbia
Pursuant to Section 5 of the Judicial Compensation Act

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## Composition of the Commission

The 2007 Judges Compensation Commission (the "Commission") was appointed pursuant to the provisions of the *Judicial Compensation Act*, S.B.C. 2003, c. 59 (the "Act"). Section 2 of the Act provides that the Commission shall consist of three members. One member is appointed by the Attorney General. A second member is appointed by the Chief Judge in consultation with the Provincial Court Judges' Association of British Columbia (the "Association"). These two members then appoint a third, who sits as chair of the Commission.

The members of the 2007 Commission were appointed as follows:

| | |
|---|---|
| Commission Chair | H. Allan Hope, Q.C.<br>Barrister, Solicitor and Arbitrator<br>Prince George |
| Attorney General Appointment | Israel Chafetz, Q.C.<br>Barrister and Solicitor<br>Vancouver |
| Chief Judge Appointment | Christopher M. Considine, Q.C.<br>Barrister and Solicitor<br>Victoria |

## Mandate of the Commission

The mandate of the Commission, as established by section 5(1) of the Act, is to make recommendations to the Attorney General of British Columbia with respect to the remuneration, allowances and benefits of Provincial Court Judges. Section 5(5) further provides that in fulfilling this role the Commission is to consider each of the following issues:

- the current financial position of the government;
- the need to provide reasonable compensation to the judges or judicial justices;
- the need to maintain a strong court by attracting qualified applicants;
- the laws of British Columbia;
- any other matter the commission considers relevant.

The Act provides that the Commission is to make recommendations for each of the next three fiscal years. In the case of the 2007 Commission, our recommendations are made with respect to the period from April 1, 2008 to March 31, 2011.

## Purpose of the Commission

Although the Commission is established by statute, its role has significant constitutional implications. The independence of the judiciary has long been recognized as vital to the proper functioning of a democracy. Public confidence in the administration of justice hinges on the public's perception that judges are deciding matters before them in a fair and impartial manner, free from external pressures. To this end, the legislative and executive branches of government must neither influence nor be perceived to influence the functioning of the judiciary.

Judges are, however, paid from Government revenues. Decisions about their salaries and benefits must by necessity be made by the Provincial Legislature. Concern for judicial independence arises from the potential for judges to be manipulated or influenced by those who control their remuneration. The purpose of the Commission is to interpose a neutral body between the judges and the Government with the goal of depoliticizing the process of determining judicial compensation. Rather than the judges and the Attorney General engaging in direct salary negotiations, both parties are afforded an opportunity to present their positions to the Commission. The Commission considers these submissions and makes recommendations to the Attorney General. As explained below, the Supreme Court of Canada has held that the Government must give serious consideration to the recommendations of the Commission and not depart from those recommendations without providing clear and rational reasons for doing so.

In *Reference Re Public Sector Pay Reduction Act (P.E.I.)* (1997), 150 D.L.R. 4th 650 (S.C.C.) (the "*P.E.I. Reference Case*"), the Supreme Court of Canada laid the groundwork for the establishment of a system of independent judicial compensation commissions throughout Canada. The 2004 Judges Compensation Commission Report set out the following ten constitutional principles derived from the *P.E.I. Reference Case*:

- salaries of Provincial Court Judges may be reduced, increased or frozen, subject to prior recourse to a special process which is independent, effective and objective, for determining judicial remuneration (page 637, paragraph 133);
- under no circumstances is it permissible for the judiciary to engage in negotiations over remuneration with the executive or representatives of the legislature (page 637, paragraph 134);
- any reduction to judicial remuneration, including de facto reduction through the erosion of salaries by inflation, cannot take those salaries below a basic minimum level of remuneration required for the office of a judge (page 638, paragraph 135);
- the principles that apply to salaries for judges apply equally to judicial pensions and other benefits (page 638, paragraph 136);
- judges, although they must ultimately be paid from the public purse, are not civil servants, since civil servants are part of the executive, and judges, by definition, are independent of the executive (page 640, paragraph 143);

- if a government rejects the recommendations of a Judicial Compensation Commission, the government must articulate a legitimate reason why it has chosen to depart from the recommendations of the Commission (page 654, paragraph 183);

- if judicial review is sought after a government rejects the recommendations of a Judicial Compensation Commission, a reviewing court must inquire into the reasonableness of the factual foundation of the claim made by the government (page 654, paragraph 183);

- there should be no negotiation of remuneration between the judiciary and the executive and legislature because negotiations from the public purse are "inherently political" (paragraph 146). However, it is proper for the Provincial Court Judges to convey their concerns and make submissions to government regarding the adequacy of current levels of remuneration (pages 655 and 656, paragraphs 186 - 189);

- financial security is a means to the end of judicial independence and is therefore for the benefit of the public (page 658, paragraph 193);

- judges' salaries must not fall below the basic minimum level of salary that is "adequate and commensurate with the status, dignity and reasonability of the office of judge" (page 659, paragraph 194).

Since the time of the 2004 Commission, the Supreme Court of Canada has had a further opportunity to consider the issue of judicial compensation in *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice); et al,* [2005] 2 S.C.R. 286 (commonly referred to as the "*Bodner*" decision). While reaffirming the principles in the *P.E.I. Reference Case*, the Court said the following with respect to the commission process at paras.14-15:

> *... The process is neither adjudicative interest arbitration nor judicial decision making. Its focus is on identifying the appropriate level of remuneration for the judicial office in question. All relevant issues may be addressed. The process is flexible and its purpose is not simply to "update" the previous commission's report. However, in the absence of reasons to the contrary, the starting point should be the date of the previous commission's report.*
>
> *Each commission must make its assessment in its own context. However, this rule does not mean that each new compensation commission operates in a void, disregarding the work and recommendations of its predecessors. The reports of previous commissions and their outcomes form part of the background and context that a new compensation committee should consider. A new commission may very well decide that, in the circumstances, its predecessors conducted a thorough review of judicial compensation and that, in the absence of demonstrated change, only minor adjustments are necessary. If on the other hand, it considers that previous reports failed to set compensation and benefits at the appropriate level due to particular circumstances, the new commission may legitimately go beyond the findings of the previous commission, and after a careful review, make its own recommendations on that basis.*

The Court went on to hold that the recommendations of a commission must have a "meaningful effect" on the setting of judicial remuneration. While the recommendations are not binding, the bald rejection of a commission's recommendations is impermissible. The government's response must evidence a good faith consideration of the commission's work and explain any departure from their recommendations in reasons that are clear, complete and responsive to the issues raised by the commission's report. These reasons must be based on a legitimate factual foundation and sound reasoning. The government's response must demonstrate an appreciation of the importance of the commission process in preserving judicial independence.

In the event that the rejection of a commission's recommendations should lead to litigation, the test to be applied on judicial review will be threefold:

1. Has the government articulated a legitimate reason for departing from the commission's recommendations?

2. Do the government's reasons rely upon a reasonable factual foundation?

3. Viewed globally, has the commission process been respected and have the purposes of the commission - preserving judicial independence and depoliticizing the setting of judicial remuneration - been achieved? (*Bodner*, at para. 31)

The Commission recognizes that the overarching goal of its mandate is to maintain public confidence in the administration of justice. In its opening comments in *Bodner*, the Supreme Court of Canada wrote as follows:

> *Litigants who engage our judicial system should be in no doubt that they are before a judge who is demonstrably independent and is motivated only by a search for a just and principled result. (para 1)*

To ensure that the process of determining judicial remuneration in no way detracts from that confidence, the Commission must act as an independent body, beholden to no party or interest. Undoubtedly, the role of judges in a constitutional democracy is a pivotal one and their compensation must reflect that unique and important position. Moreover, while comparisons may be made with the remuneration of other civil servants, it must be remembered that judges are not government employees. They form a separate and distinct branch of government that must be isolated from the political milieu. For this reason, the Commission must not bow to political pressures or expediencies, but must rather make its recommendations on a fully informed and, above all, objective basis.

It has been our goal and our challenge to consider all the material presented to the Commission and to make the recommendations that follow in keeping with these principles.

## Methodology of the Commission

The Commission's aims are best served by a process that is open to input from all interested parties. The Supreme Court of Canada has described the process as a "forum for discussion, review and recommendations on issues of judicial compensation" (*Bodner*, at para. 11). To achieve these ends, the 2007 Commission invited input through advertisements placed in major newspapers. The Commission received written submissions or materials from the following parties:

- The Provincial Court Judges Association of British Columbia
- The Government of British Columbia (the "Government")
- The Honourable Chief Judge Hugh C. Stansfield
- The Judicial Council of British Columbia
- The Canadian Bar Association, British Columbia Branch
- The British Columbia Crown Counsel Association
- The Public Service Pension Board of Trustees
- The Law Society of British Columbia

These materials were marked as exhibits and form part of the record of the Commission, all of which has been fully considered.

In May 2007, the Commission met with representatives of the Association and the Government over two days to observe various Provincial Court venues within the province. We had an opportunity to observe the context in which Provincial Court Judges perform their work at the criminal courts at 222 Main Street, Vancouver, the family court at Robson Square, Vancouver, the Vernon courthouse and the Kelowna courthouse.

The Commission conducted public hearings in Victoria, British Columbia, on June 25, 26 and 27, 2007. During the public hearings, the Commission heard oral presentations from the following persons:

- The Honourable Chief Judge Hugh C. Stansfield
- The Honourable Associate Chief Judge James J. Threlfall
- The Honourable Associate Chief Judge Brian Neal
- The Honourable Judge Robert Higinbotham
- Mr. Art Vertlieb, Q.C., Judicial Council of British Columbia
- Mr. Ian McKinnon, Pacific Issues Partners

- Mr. David A. Paul, Q.C., Canadian Bar Association, British Columbia Branch
- Mr. John W. Cook, Chair, Public Service Pension Board of Trustees
- Mr. Elliot Poll, British Columbia Crown Counsel Association

The Commission heard oral submissions at the hearings by Paul J. Pearlman, Q.C., counsel for the Association, and George K. McIntosh, Q.C., counsel for the Government.

Following the release of our Preliminary Report, the Commission received requests for clarification pursuant to section 5(2) of the Act from the Chief Judge and Deputy Attorney General Allan Seckel. The issues raised in those requests have been considered and incorporated into this Report.

The Commission is indebted to all of the participants in this process for their input and assistance.

## Summary of the 2004 Commission Report

The Supreme Court of Canada has written that the work of the previous compensation commission should form the background and context in which the next commission performs its task. Thus, we have attempted to summarize the key issues considered and recommendations made by the 2004 Commission in order to put the present analysis in its proper context.

### Salary

On the issue of salary, the 2004 Commission recommended a substantial increase in pay. As of 2003, Provincial Court Judges in British Columbia were earning $161,250 annually. By way of contrast, British Columbia Supreme Court Justices were earning $216,600. Across the country, the salaries of Provincial Court Judges were higher in Ontario ($206,348), Quebec ($187,700), Alberta ($186,000), the Northwest Territories ($182,972), the Yukon ($178,000) and Prince Edward Island ($161,627).

The Commission recognized the need for a substantial increase in salary to bring British Columbia rates in line with those across the country and to reduce the gap between Provincial Court and Supreme Court salaries within British Columbia. On the latter issue, the Commission observed that both courts would be competing for applicants from roughly the same pool of qualified lawyers. The Commission expressed concern that the disparity in salary incentives in excess of $50,000 would cause many of the best candidates to opt for positions on the Supreme Court. The Commission recognized that "Victoria does not have Ottawa's spending power" (page 19), but made its recommendations with a view to narrowing that gap to the greatest extent possible.

Based on British Columbia's financial situation at the time, the Commission saw the need for a measure of restraint over the short term, but felt confident that the economic recovery of the

Province would be sufficiently secured within two years that significant salary increases would then be affordable. Thus, the Commission recommended cost of living increases for Years One and Two, a substantial increase in Year Three to $198,000 and a further cost of living increase in Year Four. The cost of living increases were to be based on changes in the Consumer Price Index.

The Government rejected the Commission's recommendations for Years One and Two, substituting a 0% increase for both years, but adopted the recommendations for Years Three and Four.

The resulting salaries were as follows:

| | | |
|---|---|---|
| 2004/05 | $161,250 | 0% increase |
| 2005/06 | $161,250 | 0% increase |
| 2006/07 | $198,000 | 23.3% increase |
| 2007/08 | $202,356 | 2.2% increase |

### Benefit Plans

The 2004 Commission was asked to consider whether Provincial Court Judges should be subject to system-wide changes made to their benefit plans. The Association took the position that no changes should be made to the benefit plans of a judge without prior consideration by a compensation commission. The Government disagreed, arguing that allowing across-the-board changes to flow through automatically to judges would not threaten the independence of the judiciary.

The 2004 Commission concluded that, for retired judges, changes to benefits in their pension plan could be made between commissions, observing that the plan was administered by trustees obligated to act in the interest of all members. For sitting judges, on the other hand, the Commission recommended that no benefit, premium, fee or term of a benefit plan (with the exception of the Medical Services Plan and Pharmacare) should be changed without prior consideration by a commission. The Government adopted this recommendation.

### Professional Development Allowance

The 2004 Commission acceded to a request by then Chief Judge Baird Ellan that the professional development allowance be increased. The Commission recommended an increase to $3,000 with the ability to carry forward any unused portion for one year. The Government adopted the proposed increase in the amount of the allowance, but insisted that allowable expenses be restricted to certain enumerated categories, rather than giving full discretion to the Chief Judge.

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## Summary of Issues before the 2007 Commission

### Salaries

The current annual salary of a puisne judge of the Provincial Court for the period April 1, 2007 to March 31, 2008 is $202,356. The Association advances the position that Provincial Court Judges should receive the following salary increases over the next three fiscal years:

| | |
|---|---|
| April 1, 2008 – March 31, 2009 | $235,000 (an increase of 16.13%) |
| April 1, 2009 – March 31, 2010 | $242,050 (an increase of 3%) |
| April 1, 2010 – March 31, 2011 | $249,312 (an increase of 3%) |

The Association contends that the present level of remuneration results in a substantial gap between the salaries of Provincial Court Judges and those of British Columbia Supreme Court Justices. The proposed increases are designed to make Provincial Court salaries equal to approximately 90% of Supreme Court salaries. The Association submits that this increase is necessary to attract to the provincial bench the best and most qualified applicants who might, for financial reasons, overlook the Provincial Court in favour of appointment to the Supreme Court.

The Government urges the Commission to recommend the following more modest salary increases:

| | |
|---|---|
| April 1, 2008 – March 31, 2009 | $206,403 (an increase of 2%) |
| April 1, 2009 – March 31, 2010 | $210,531 (an increase of 2%) |
| April 1, 2010 – March 31, 2011 | $214,742 (an increase of 2%) |

The Government observes that, as a result of the Province adopting the recommendations of the 2004 Commission, Provincial Court Judges have received a salary increase of 25.4% over the past four years. Provincial Court Judges in British Columbia presently rank third amongst their provincial counterparts in salary, behind Ontario and Alberta. This, says the Government, is precisely where British Columbia Judges' salaries should rank, given our Province's relative economic position within the country. The Government submits that the recent significant pay increases have achieved the goal of bringing Provincial Court salaries up to an adequate level and that this level can be maintained by increases of 2% annually to offset inflation.

### Vacation Entitlement

Provincial Court Judges are currently entitled to 30 days (6 weeks) of paid annual leave. The Association asks that this figure be increased to 40 days (8 weeks) per year. The Association points out that Provincial Court Judges in Ontario receive 40 days of annual leave. The vacation entitlement of British Columbia Supreme Court Justices alternates between 7 and 8 weeks per year when one factors in the two week period over Christmas and New Years during which the Court is closed. The Association suggests that the effect of an increase in vacation

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time will be a more energetic and productive bench, thereby offsetting to a large degree any corresponding need for additional judicial resources.

The Government takes the position that vacation entitlement should remain at 30 days per year.

### Pension and Benefit Plans

Provincial Court Judges are members of the Public Service Pension Plan (the "Pension Plan"). At the time of the 2004 Commission, the total annual premium cost to fund the judges' pension was 29.2% of their salary. In keeping with the recommendation of the 2004 Commission that no term of a benefit plan should be changed without consideration by a commission, the judges' pension contribution rate was fixed by statute at 7%, which rate was equivalent to that paid by the other members of the Pension Plan. The Government's pension contribution rate was fixed at 22.2%. The trustees of the Pension Plan have since increased the member contribution rate from 7% to 9.13%. To date, the judges have continued to contribute 7% of their salary and the Government has paid the difference pending the resolution of this issue before the Commission.

The Government asks the Commission to recommend that judges pay the same contribution rate as all other Pension Plan members. Mr. McIntosh takes the position that plan-wide changes to either contribution rates or benefits have no impact on judicial independence. He asks the Commission to recommend that in the future such changes flow through automatically to the judges without the involvement of the Commission.

The Association proposes that the contribution rate remain fixed at 7%. Mr. Pearlman argues that the stability of pension contribution rates and benefits is necessary for the financial security of a sitting judge. Therefore, any changes made by the trustees to the Pension Plan must be vetted by the Commission before those changes can have any impact on the judges' total remuneration.

A similar issue arises with respect to the Extended Health Plan and Group Life Insurance Plan in which the judges participate. Changes have been made to the terms and benefits of these plans since the 2004 Commission. However, in keeping with the recommendations of that Commission, these changes have not yet been extended to the judges. The Association asks that the judges receive the benefit of these changes. The Government maintains that such changes should apply to the judges automatically.

### Professional Development Allowance

At the conclusion of the public hearings, the Association and the Government presented to the Commission a joint submission with respect to changes to the judges' professional development allowance. The joint proposal recommended the following:

- the annual amount of the allowance should be increased from $3,000 to $4,000, with the ability to carry over any unused portion for one year;

- the full allowance may be applied to cover expenses related to attendance at courses, seminars or conferences; and
- in any year, up to $2,500 of the allowance may be used for expenses reasonably incurred in the execution of the office of a judge, at the discretion of the Chief Judge, in certain enumerated categories.

The specifics of these proposals will be set out in detail later in this report under the heading "Recommendations".

### Senior Judges Program

The Senior Judges Program came about as the result of a joint submission presented to and adopted by the 2001 Judicial Compensation Committee. The program allows a Provincial Court Judge to retire from full time duties, to begin receiving his or her pension, but to continue sitting as a Provincial Court Judge on a part time (or supernumerary) basis. At present, the program permits a judge to serve on a part time basis up to a maximum of five years. The Association, the Government and Mr. Vertlieb, on behalf of the Judicial Council, all supported the proposal of the Chief Judge that the maximum length of participation in the Senior Judges Program be extended to seven years.

## Work of the Provincial Court

There are currently 131 full time Provincial Court Judges and 14 part time or 'Senior' Judges in British Columbia. These judges sit in 87 different court locations throughout the province. Provincial Court Judges, particularly those outside of the Lower Mainland, spend a good deal of time traveling to courthouses in different locations. For some judges, travel is a routine and necessary element of their job.

The Provincial Court of British Columbia has a broader jurisdiction than some other provincial courts in Canada. While its criminal caseload comprises the bulk of the Court's work, the Court has jurisdiction in family law, child protection law and civil law. The scope of the Court's jurisdiction is expanding. The most significant evolution since the 2004 Commission has been the increase in the monetary limit in Small Claims Court from $10,000 to $25,000. The scope of the work of the Provincial Court is such that its judges are the personification of justice for the vast majority of British Columbians.

### Criminal Jurisdiction

Numerous legislative changes over the past 25 years have steadily increased the jurisdiction of the Provincial Court in criminal matters to the point that it now hears approximately 99% of all criminal cases prosecuted in British Columbia. The Supreme Court has been left with exclusive jurisdiction over very few offences, namely, murder and conspiracy to commit murder. With rare exception, all other offences may be prosecuted in Provincial Court either at the election of the accused or as a result of the offence being one over which the Provincial Court has exclusive

jurisdiction. Parliament has increased the maximum sentences permitted for a variety of summary conviction matters, further encouraging the use of summary proceedings, which are the exclusive purview of the Provincial Court.

Provincial Court Judges in British Columbia sit as Youth Court Judges. The *Youth Criminal Justice Act*, S.C. 2002, c.1, provides for trials in Supreme Court only for a handful of the most serious offences or where the Crown intends to seek an adult sentence. The result is that the Provincial Court is responsible for disposing of an even greater proportion of youth criminal matters than adult criminal matters.

The Commission recognizes that in the context of hearing criminal cases, Provincial Court Judges are often called upon to decide complex legal issues. These issues include Charter challenges to the constitutionality of legislation, dangerous offender proceedings, mental competency hearings, drug conspiracy trials and criminal organization trials.

### Family Jurisdiction

In British Columbia, Provincial Court Judges hear all proceedings relating to child protection under the *Child, Family and Community Service Act*, R.S.B.C. 1996, c.46. In this capacity, judges are called upon to reach solutions that will ensure the well being of children while respecting the rights of parents and other family members. Trials in these matters can often be difficult and protracted.

The Provincial Court is frequently the forum in which matters relating to custody, access and maintenance are heard. The *Family Relations Act*, R.S.B.C. 1996, c.128, grants jurisdiction on these issues to both the Provincial Court and the Supreme Court. The *Family Maintenance Enforcement Act*, R.S.B.C. 1996, c.127, on the other hand, gives the Provincial Court exclusive responsibility for the enforcement of maintenance orders and the determination of paternity.

Concern has been expressed about the growing number of self-represented litigants who come before the Provincial Court in family matters. The resolution of these emotionally charged issues is challenging at the best of times. These challenges are compounded when the judge must assist a self-represented litigant in navigating his or her way through a legal proceeding. The Commission acknowledges the ongoing need to attract to the Provincial Court candidates who are possessed not only of expertise in these areas, but also a healthy measure of patience and understanding.

### Civil Jurisdiction

In 2005, the *Small Claims Act*, R.S.B.C. 1996, c. 430, was amended to permit civil claims to be brought in Provincial Court for amounts up to $25,000. The previous ceiling for Small Claims actions had been $10,000. In breadth of civil jurisdiction, the Provincial Court of British Columbia is near the head of the pack. Alberta has a similar $25,000 monetary limit. The provincial courts of Ontario, Saskatchewan and Newfoundland entertain claims up to $10,000, $5,000 and $3,000, respectively. In Manitoba, New Brunswick, Nova Scotia and Prince Edward Island, provincial court judges do not hear civil matters at all. Only certain Quebec provincial courts, with a ceiling of $70,000, entertain claims with monetary limits larger than those heard in British Columbia Provincial Court.

The subject matter over which the Provincial Court has jurisdiction includes all civil claims except for defamation, malicious prosecution and builders' liens.

As mentioned above, the recent increase in the monetary jurisdiction of the Provincial Court represents an expansion of the court's role since the date of the last Commission. In some locations, pretrial conferences have become mandatory for trials expected to last one day or longer. It is anticipated that this $25,000 limit may be increased to $50,000, but no implementation date has been set. As the Chief Judge suggests, the expanding civil jurisdiction of the Provincial Court will require a greater focus on the recruitment of experienced civil litigation lawyers to enhance the expertise of the Court in the adjudication of civil matters.

### Innovation and Reform

The Commission heard evidence concerning a variety of reforms undertaken by the Provincial Court Judges since the time of the last Commission. Associate Chief Judge Neal advised the Commission of a province-wide reform initiative that began in 2005. Its aim was to identify and address systemic inefficiencies in order to make better use of limited judicial resources. The results of this process have included a pilot project in Victoria in which responsibility for administrative matters was shifted to judicial case managers in order to free up judges for more substantive tasks.

Associate Chief Judge Threlfall provided information concerning the development of electronic benchbooks designed to supply judges with ready access to a legal database. These benchbooks are of particular importance when judges are hearing from self-represented litigants or when sitting in remote locations where no law library is available. Judge Threlfall spoke of a further reform made to expand the role of Judicial Justices of the Peace in conducting bail hearings by video.

## Financial Position of the Government

The Province is in a state of sound financial health. This is common ground between the Association and the Government. The Commission had the benefit of both a written report and an oral presentation from Mr. Ian McKinnon, a consultant in public policy and statistical analysis. Mr. McKinnon has made similar presentations to two previous commissions.

The Government is presently forecasting its third successive budget surplus. The updated forecast for the 2006/07 fiscal year is a surplus of $3.15 billion. Mr. McKinnon advises that this figure constitutes the largest surplus ever in British Columbia's history and represents approximately the same percentage of GDP as the last two surpluses. The Minister of Finance has announced an intention to continue to produce surpluses through to 2010. Mr. McKinnon concludes that the Province is operating within what he describes as a "stable fiscal policy framework." He points out that the current Government has taken a conservative approach to its forecasts. We are told that there is every reason to be confident that the Government will realize the billion dollar surpluses presently forecast through the period covered by this Commission's recommendations.

As a further measure of economic health, Mr. McKinnon directs our attention to the Province's declining debt to GDP ratio. The figures he provided for total debt to GDP for the past 10 years are as follows:

| 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
|---|---|---|---|---|---|---|---|---|---|
| 27.0% | 26.5% | 27.9% | 28.6% | 26.2% | 27.0% | 26.7% | 25.9% | 22.8% | 20.4% |

The size of the Province's debt has, over the past several years, fallen in relation to the strength of its economy. Mr. McKinnon adds that the present conservative forecast for 2007 would see this ratio drop even further to 19.1%.

Mr. McKinnon asserts that bond rating agencies provide an independent assessment of a government's ability to carry and service its debt load. Moody's Investors Service has raised British Columbia's credit rating twice since 2005, moving the Province from 'Aa2' to 'Aa1' and, in October 2006, to 'Aaa'. The other governments in Canada that enjoy a Triple 'A' credit rating from Moody's are the Government of Alberta and the Federal Government.

Overall, Mr. McKinnon's conclusion is that British Columbia's economic outlook is stable and healthy. He would rank this Province behind Alberta only (and ahead of Ontario) in its ability to entertain increased expenditures such as those proposed by the Association. The Association adopts Mr. McKinnon's conclusions and invites the Commission to find that the cost of giving effect to the Association's proposals would have no significant impact on the Government's ability to continue achieving its fiscal goals.

The Government does not dispute Mr. McKinnon's evidence. However, it does submit that British Columbia's economy is more accurately seen as third in rank behind that of Alberta and Ontario. In support of this view, the Government points to several economic indicators for 2006. For instance, in real GDP per capita, a measure of the market value of all goods and services produced in relation to the population, British Columbia ranked third behind Alberta and Ontario. A similar ranking is obtained by a comparison of nominal personal income per capita, a figure derived by taking the total personal income earned in the Province and dividing by the population. British Columbia also ranked third behind Alberta and Ontario in annual average hourly wage rates.

The Government provided the Commission with data, which Mr. McKinnon accepted as accurate, to support its central contention that British Columbia ranks third among the provinces on issues of pay. Mr. McKinnon, on behalf of the Association, pointed to some sectors in which British Columbia ranked first for average weekly earnings, such as the 'education and related services' sector and the 'health care and social assistance' sector.

The Government takes the position that the present prosperity of the Province should be seen as a neutral factor. In other words, the Commission should focus on the other statutory criteria to determine a fair and reasonable level of remuneration, knowing that the finances of the Province pose no present impediment.

The Commission agrees that the question before us is not simply what salary the Government is able to pay. Rather, the question for the Commission is what level of remuneration is fair and reasonable. Given the healthy finances of the Province, we are able to approach this analysis with confidence that the Province has the ability to sustain fair and reasonable compensation for judges.

As a further measure of economic health, Mr. McKinnon directs our attention to the Province's declining debt to GDP ratio. The figures he provided for total debt to GDP for the past 10 years are as follows:

| 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
|---|---|---|---|---|---|---|---|---|---|
| 27.0% | 26.5% | 27.9% | 28.6% | 26.2% | 27.0% | 26.7% | 25.9% | 22.8% | 20.4% |

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## Need to Provide Reasonable Compensation to Judges

The work of the courts is increasingly subject to public scrutiny. The public expects judges to stay abreast of the law, to make difficult decisions on a routine basis, and to remain even tempered and impartial throughout. The Report of the 1998 Judicial Compensation Committee captured the difficulty in arriving at a figure to compensate this sort of work in the following passage:

> *We entrust to judges a unique and weighty responsibility. We ask them to sit in judgment on any one of us – from the highest to the lowest rank – and fairly and impartially apply the law to our deeds.*
>
> *But what would be reasonable compensation for the burden of deciding which of two loving parents, now separated, will have the privilege of putting their children to bed each night and seeing them at breakfast in the morning?*
>
> *What would be reasonable compensation for the judge who must face a man who was brutalized as a boy and has now injured another, and decide how long he will spend behind bars, potentially to be victimized again?*
>
> *There is no simple definition of 'reasonable compensation' just as there is no easy answer to the questions judges face every day. (pgs. 13-14)*

The Commission is mindful that sitting judges are not permitted to engage in any other form of occupation, profession or business. They must eschew political affiliations and distance themselves from certain personal relationships.

With respect to the British Columbia Provincial Court, the Commission recognizes that the Court has a broad jurisdiction. The monetary limit to the civil jurisdiction of the Provincial Court in this Province has increased since the time of the last Commission – a trend that seems likely to continue. Our judges must be proficient in criminal law, family law and, in increasing measure, civil law.

It is with all of these factors in mind that the Commission approaches the task of determining a reasonable level of compensation. It was the view of the 2004 Commission that a useful comparator for this purpose is the salaries of other judges within Canada. We agree that this is a relevant starting point.

### Comparison with Supreme Court Salaries

The current annual salary for a justice of the Supreme Court of British Columbia as of April 1, 2007, was $252,000. This salary will be adjusted on an annual basis by the percentage change to the Industrial Aggregate as determined by Statistics Canada. For this reason, it is impossible to determine with precision how the salaries for Supreme Court Justices will change over the next several years. Mr. McKinnon notes a positive correlation between changes to the Aggregate Index and changes to the Core Consumer Price Index of the Bank of Canada. Mr. McKinnon calculates that if the Core Consumer Price Index were to increase at 2% per year,

which he believes is a conservative estimate, the corresponding change in the Aggregate Index would be approximately 1.0213% per year. On this basis, he forecasts the following salary increases for Supreme Court Justices:

| Year | Salary |
|---|---|
| 2007 | $252,000 |
| 2008 | $257,370 |
| 2009 | $262,845 |
| 2010 | $268,436 |
| 2011 | $274,133 |

For ease of reference, we reproduce here the competing salary proposals of the Government and the Association before this Commission:

| Fiscal Year | Government Proposal | Association Proposal |
|---|---|---|
| 2008 – 2009 | $206,403 | $235,000 |
| 2009 – 2010 | $210,531 | $242,050 |
| 2010 – 2011 | $214,742 | $249,312 |

Assuming that Supreme Court salaries increase as predicted by Mr. McKinnon, the gap between Provincial Court salaries and Supreme Court salaries by 2011 would be $59,391 under the Government's proposal and $24,821 under the Association's.

Previous commissions have recognized that salary is but one component of the total compensation package. Provincial Court Judges receive a pension and benefits equivalent to $67,379 per year, bringing their total annual compensation to $269,735. The Government points to this total figure as further reason to conclude that the compensation currently provided to Provincial Court Judges is sufficient to attract judicial candidates from amongst the top echelons of the private bar and the public sector. The Chief Judge, on the other hand, submits that when pension accumulation is factored in, the gap between Provincial Court compensation and Supreme Court compensation increases to over $100,000 per year for a 15 year judicial career.

The Association stresses the importance of reducing this spread. The recommended increases of the 2004 Commission were driven, in part, by a concern that the disparity between Supreme Court salaries and Provincial Court salaries should be narrowed. The Commission expressed these concerns in the following passage from page 19 of their report:

> *It may be that candidates for judicial office will prefer a Provincial rather than a Supreme Court appointment for reasons unrelated to pay. The two Courts are different in some ways, after all, and an aspirant to judicial office may be better suited temperamentally to one than the other. In the main, however, the Provincial and Supreme Courts are competing for the same pool of lawyers who possess the rare combination of personal and intellectual traits required for a successful career on the bench. The members of this Commission are concerned that many of the*

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*best candidates will opt for positions on the Court that presently offers in excess of $50,000.00 more per annum in remuneration.*

*On the basis of the broad and growing jurisdiction of the Provincial Court, which appears increasingly to parallel the jurisdiction of the Supreme Court, we can see no reason why Provincial Court salaries should lag so far behind. The substantial disparity between the salaries of Provincial and Supreme Court Judges contributes to a perception of second-class status for the Court that is most likely to be involved with a larger section of the public. We acknowledge, however, that Victoria does not have Ottawa's spending power, and the financial obligations of the provincial government should not be determined by the spending decisions of the federal or any other government. Our belief is simply that this large gap in salaries should be narrowed to the greatest extent possible.*

The Association advised us that its proposed increase to $235,000 for the 2008-09 fiscal year is designed to bring Provincial Court salaries up to approximately 90% of Supreme Court salaries. The 2001 Commission acknowledged that its two predecessors had suggested a goal of 90% of Supreme Court salaries but had declined to make such recommendations because of fiscal constraints. During the 2001 Commission process, the Association took the position that full parity with the federally appointed courts was the appropriate goal. In its report, the Commission expressly declined to take a position on that issue and relied predominantly on comparisons with the provincial courts of Alberta and Ontario in making its recommendations.

The idea of parity was advocated in the hearings before this Commission by the Chief Judge, who submitted that there was no reason in principle why the two courts should receive different levels of remuneration. The Government rejects the suggestion that Provincial Court salaries should be tied to those of the Supreme Court.

### Comparison with Provincial Court Salaries

The Commission was provided with the following figures representing the 2007 salary levels for Provincial Court Judges across the country:

| Province | Salary |
|---|---|
| Ontario | $227,735 |
| Alberta | $220,000 |
| Quebec | $213,500 (recommended but not implemented) |
| British Columbia | $202,356 |
| Saskatchewan | $198,900 |
| Prince Edward Island | $186,349 |
| Nova Scotia | $180,708 |
| Manitoba | $178,230 |
| New Brunswick | $174,600 |
| Newfoundland and Labrador | $173,591 |

The Commission was provided with figures for the salaries of judges in the Territorial Courts as follows:

| Territory | Salary |
|---|---|
| Northwest Territories | $209,246 |
| Yukon | $199,901 |

Some observations concerning the above figures are necessary. We are advised that Ontario's Sixth Triennial Commission, charged with making salary recommendations for the period 2004 to 2007, has yet to complete this process. As such, the present figure represents the 2003 salary level adjusted annually by the increase in the Industrial Aggregate Index. The legislation in Ontario differs from that in British Columbia in that the recommendations of Ontario's commission will be binding upon that government. The Association makes the point that the present level of remuneration in Ontario could increase retroactively.

The situation in Quebec is complicated by litigation over the implementation of two different commission reports. The Province has recently announced that it will not appeal the decision of the Quebec Superior Court ordering the government to implement the recommendations of the O'Donnell Commission for the years 2001 to 2004. The effect of implementing those recommendations will be that the judges' annual salary would be set at $180,000 beginning on July 1, 2001, with a 2.5% increase in the second year and a 2% increase in the third year. Recommendations for the period from July 1, 2004 to June 30, 2007 were made by the Cimon Commission. The refusal of the government to give effect to these recommendations has led to litigation, which is presently unresolved. If implemented, the recommendations of the Cimon Commission would see the salaries of Quebec judges rise to $213,500 for the year 2007.

Provincial Court judges in P.E.I. receive a salary equal to the average of the salaries paid to judges across the country. This calculation has not yet been performed for 2007. The above figure represents the present salary based on the 2006 national average.

Lastly, we are advised that the figure for Yukon represents the 2006 salary, as the process to determine the 2007 level of remuneration has not yet completed.

As noted above, the Association places its greatest emphasis on comparisons with the salaries of Supreme Court Justices. With respect to other provincial courts, the Association submits that Ontario and Alberta are the best comparators. The Association urges consideration of the proposed salary for Quebec judges rather than their actual present salary.

The Government argues that the effect of the increases recommended by the 2004 Commission was to place British Columbia Provincial Court salaries precisely where they should be in comparison to the other provinces. The Government, relying on the economic indicators cited earlier, maintains that British Columbia's economy ranks third behind that of Ontario and Alberta, as do its wages. As such, it is entirely fitting that British Columbia's judges should receive the third highest salaries, behind their counterparts in Ontario and Alberta. It would not be appropriate, the Government argues, to pay one isolated segment of this province disproportionately higher than the rest.

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The Government argues that the salary of $213,500 recommended for Quebec judges should not be factored into the equation, as implementation of that recommendation is on hold pending the outcome of litigation.

The Government takes the position that Territorial Court salaries ought not to be included for comparison purposes. The Government argues that the territorial salaries reflect the remoteness of those locations and the need to recruit from outside the territories. The Commission has been provided with excerpts from the 2004 Yukon Judicial Compensation Commission Report and the 2004 N.W.T. Judicial Remuneration Commission Report. In the view of the Commission, these reports do confirm the significance of the remoteness and recruiting factors in the setting of territorial salaries.

### Comparison with Public Sector Salaries

The Commission was provided with data comparing the earnings of various senior public servants, as set out in Exhibit 6 from the public hearings. The Government says that these comparisons are appropriate indicators of how British Columbia compensates its "best and brightest" in public service. It argues that these comparisons show that Provincial Court Judges are already at the top of the list in terms of overall compensation for those paid out of the public purse in British Columbia. Unlike civil servants, judges have the additional advantage of tenure as a condition of employment.

The Association argues that the salaries of civil servants provide little guidance in determining appropriate judicial salaries, since the role and terms of appointment of a judge are fundamentally different from those of a Deputy Minister or a Crown corporation executive. Mr. Pearlman submits that security of tenure is an irrelevant consideration, as it is a necessary component of judicial independence. The Association references the decision of the 2003 Alberta Judicial Compensation Commission, which held that the principal of judicial independence militated against placing any significant weight on the salaries of other government employees.

One inference that can be drawn from those salaries, says the Association, is that the Government is increasingly willing and able to pay competitive salaries. The Association points to the increase in Deputy Minister salaries from a range of $134,300.08 - $203,500.08 in 2004 to a range of $221,760.09 - $243,936.00 as of August 1, 2006.

## Need to Maintain a Strong Court by Attracting Qualified Applicants

The Commission recognizes the need to set salaries and benefits at a level sufficient to attract to the Provincial Court lawyers from the top ranks of the British Columbia bar. The calibre of the Court, as well as the public's confidence in it, depends upon the Court's ability to attract those lawyers who have distinguished themselves during their years of practice.

The Commission had the benefit of both written submissions and an oral presentation from Mr. Vertlieb, on behalf of the Judicial Council. The Judicial Council is the body responsible for considering applications from lawyers seeking appointment to the Provincial Court bench and for making recommendations to the Government as to suitable candidates. Mr. Vertlieb provided the Commission with information about the recruitment process over the past six year. Some of the more salient figures for that period are as follows:

- The number of applicants per year ranged from a low of 44 in 2002 to a high of 75 in 2001.
- The number of applicants approved by the Council per year ranged from a low of 9 in 2006 to a high of 19 in 2003.

The Chief Judge, who chairs the Judicial Council, provided the following information on the recruiting needs for the upcoming three years:

- There are presently 23 applicants approved by the Judicial Council but not yet appointed.
- Based on current demographics and past experience, the number of vacancies anticipated on the Provincial Court over the next three could be as high as 30.
- The number of vacancies anticipated on the Supreme Court over the next three could be as high as 24.

The Chief Judge explains the growing recruitment needs of the Supreme Court. He observes that the Chief Justice of the Supreme Court has taken an increasingly proactive role in recruiting due to the heightened need for new candidates.

The Association contends that the British Columbia Provincial Court is competing with the Supreme Court for applicants from the same pool of qualified lawyers. This view is shared by the Chief Judge and Mr. Vertlieb on behalf of the Judicial Council. The Association argues that unless the remuneration gap between the two courts is substantially reduced, it will act as a disincentive to prospective applicants who might otherwise consider a career on the Provincial Court bench. It is suggested that the Provincial Court may have particular difficulty attracting more senior and qualified members of the private bar who will be won over by the higher pay, better pension and prestige of the Supreme Court. These experienced civil litigators are precisely the sort of applicants the Judicial Council is seeking due to the expansion of the Provincial Court's civil jurisdiction.

The Government submits that there is no evidence of the Provincial Court having any difficulty attracting qualified applicants at the current level of remuneration. It notes the opinion offered by the Chief Judge that he is satisfied with the quality of the candidates who have been approved by the Judicial Council in recent years. The Government observes that the Council has approved no fewer than nine new candidates per year for each of the past six years. If this trend continues, the new candidates alone will be sufficient to meet the anticipated need over the next three years, even without recourse to the pool of 23 lawyers presently awaiting appointment.

The Government points to the large number of 'baby boom' lawyers reaching the average age of appointment to the bench, suggesting that rather than a shortage of candidates, the Judicial Council is likely to see an increase in the years to come. The Government reminds the Commission that a similar recruitment shortage was predicted by the Association at the 2004 Commission, yet this shortage never materialized. The Association replies that the number of judicial applicants has remained strong precisely because the 2004 Commission recommended a significant salary increase.

## Other Factors

### The Salaries of Crown Counsel

In March 2007, the British Columbia Crown Counsel Association reached an agreement with the Government that ties the salaries of its members to those of Provincial Court Judges. The Provincial Court Judges Association was concerned that the Commission could scale back increases to judicial remuneration out of concern that the corresponding increase in Crown Counsel salaries would put additional strain on the Government's finances.

The Government's position is that the effect of our recommendations on the salaries of Crown Counsel is not relevant. The Association approved of this approach, as did the Crown Counsel Association.

The Commission agrees that the fact that the Province has chosen to link the salaries of certain employees with those of Provincial Court Judges cannot be permitted to influence the recommendations of the Commission. Judges' salaries must be determined in accordance with the statutory criteria and the principles of judicial independence. The very purpose of this Commission is to insulate the process of setting judicial remuneration from extraneous considerations.

The Commission has not taken into consideration the effect of the Province's collective agreement with the Crown Counsel Association or, for that matter, any other salary linked to Provincial Court Judges' compensation.

## Pension and Benefit Plans

At issue for this Commission is whether the judges' contribution rates should be increased to bring them in line with the current rates paid by other members of their Pension Plan. The Government asks the Commission to revisit the broader question of whether the judges should be insulated between commissions from across-the-board changes made by the trustees.

The contribution rates for the Pension Plan are set by statute. Section 18(1) of the Act sets the contribution rate for judges at 7% and the contribution rate for the Government at 22.2%. The judges' premium was equivalent to that paid by other members of the Pension Plan at the time

that section 18(1) of the Act was enacted. In effect, the judges were responsible for 24% of the premium cost and the Government was responsible for the remaining 76% of the cost. Since then, contribution rates have twice increased for other members of the Pension Plan such that its members are now paying 9.13% of their salary and employers are paying 25.80%. While the Government has paid the increased employer contribution rate, the Provincial Court Judges continue to pay only 7% of their salary, as mandated by the Act. To date, the Government has paid the additional 2.13% on behalf of the judges in addition to the 25.80% employer contribution.

The Association contends that the financial security that judges must enjoy to ensure judicial independence requires security of benefits as well as of salary. For this reason, the Association recommends that the contribution rates for judges remain fixed by legislation and should not be changed without a recommendation from the Commission. The Association further suggests that the present contribution rate of 7% be maintained, that the Government continue to pay the difference and that the Commission may consider the benefit of a lower pension contribution rate in determining appropriate salary levels.

The Government recommends that the *Judicial Compensation Act* be amended to permit plan wide changes voted upon by the trustees to flow through automatically to the judges as they would to other plan members. Being affected by changes to a group plan in like fashion to other plan members does not, it is argued, pose any threat to judicial independence warranting the involvement of the Commission. Alternatively, if the contribution rate of Provincial Court Judges is to remain fixed by legislation, section 18(1) of the *Judicial Compensation Act* should at least be amended to reflect the current member contribution rate within the Pension Plan of 9.13%.

Mr. John W. Cook, Chair of the Public Service Pension Board of Trustees, provided both written and oral submissions to the Commission. In Mr. Cook's initial written submissions dated June 14, 2007, he assumed a position much the same as that of the Government, recommending that the judges participate in the Pension Plan on the same terms as other plan members. In response to the position advanced by the Association in its Reply Submissions dated June 20, 2007, Mr. Cook filed a further submission dated June 22, 2007. In that letter, as well as in his oral presentation, Mr. Cook urged the Commission to recommend the creation of a separate pension plan for Provincial Court Judges.

Neither the Association nor the Government supports the creation of a separate pension plan.

A further issue for the consideration of this Commission is the manner in which changes to benefit plans should apply to Provincial Court Judges. The Commission was advised that since 2004 a number of enhancements have been made to the benefit plans in which the judges participate. One such change was an increase in the lifetime maximum coverage under the Extended Health Plan from $50,000 to $100,000. Other changes were made to the Group Life Insurance Plan. The Commission was advised that these enhancements were financed by increases in the deductibles in those plans. The judges have been insulated from both the enhanced benefits and the increased deductibles due to the recommendation of the 2004 Commission that changes to benefit plans should have no effect on sitting judges until considered by a commission.

The Association asks that the changes that have been made to these plans since 2004 be extended to the judges.

As with the pension issue, the Government argues that the terms of the judges' benefit plans should not be frozen from one commission to the next. Rather, the Government suggests that the judges should participate in their benefit plans in the same manner as other plan members. Under this proposal, any changes made by plan administrators would have immediate effect on the judges without the need for recourse to a commission.

## Vacation Entitlement

Judges of the Provincial Court of British Columbia currently receive 30 days of paid annual vacation. This figure does not include statutory holidays. The Association asks the Commission to recommend an increase in annual vacation to 40 days. The Government opposes any increase.

The Commission was advised that judges of the various provincial and territorial courts have the following vacation entitlements:

| Jurisdiction | Vacation Days Per Year |
|---|---|
| Ontario | 40 |
| Yukon | 35 |
| Northwest Territories | 31.5, 35, 40 (based on years of service) |
| British Columbia | 30 |
| Alberta | 30 |
| Saskatchewan | 30 |
| Manitoba | 30 |
| Quebec | 30 |
| New Brunswick | 30 |
| Prince Edward Island | 30 |
| Nova Scotia | 25, 30 (based on years of service) |
| Newfoundland and Labrador | 25 |

In any given year, half of the British Columbia Supreme Court Justices will be entitled to 5 weeks of holidays and the other half to 6 weeks of holidays. The Association invites the Commission to factor in the additional two weeks over the Christmas and New Years break during which the Supreme Court is not in session. During that period, the justices are not required to attend, with the exception of those justices on call. The result, says the Association, is that the total vacation time afforded to a Supreme Court Justice in British Columbia will alternate between 7 weeks (35 days) and 8 weeks (40 days) per year.

The Association suggests that an increase in vacation time from 30 to 40 days will assist in making the Provincial Court more attractive vis-à-vis the Supreme Court. The Chief Judge, citing the success of the Senior Judge Program, offers his observation that judges are able to approach their work with more energy and enthusiasm when they enjoy increased time off.

The Government proposes that vacation entitlement remain at 30 days per year in keeping with the majority of provincial courts in Canada.

## Costs

The question of who would bear the costs to the Association of participating in these proceedings has been resolved by the parties. The Commission sees no need to comment further on that issue.

## Recommendations

Having considered all of the foregoing, the Commission makes the following recommendations:

### 1) Salary

Judicial salaries must be set at a level that will continue to attract highly qualified lawyers from both the private bar and public service. British Columbians would not be well served by a Provincial Court that is being overlooked for financial reasons by those lawyers best suited for it. While the Commission does not recommend that the salaries of Provincial Court Judges be tied to those of Supreme Court Justices, the Commission does recognize the importance of setting Provincial Court salaries with a view to minimizing the wage disparity between the two courts.

Further, the remuneration of Provincial Court Judges in British Columbia should keep pace with that of other provinces. Given British Columbia's healthy financially outlook, the Commission sees no reason why the judges of this Province should not receive salaries in keeping with our relative economic position within the country.

Bearing all of these factors in mind, the Commission makes the following salary recommendations for puisne judges of the Provincial Court:

| | |
|---|---|
| April 1, 2008 – March 31, 2009 | $220,000 (an increase of 8.7%) |
| April 1, 2009 – March 31, 2010 | $225,500 (an increase of 2.5%) |
| April 1, 2010 – March 31, 2011 | $231,138 (an increase of 2.5%) |

The Commission recommends that the Chief Judge continue to receive a salary equivalent to that of a puisne judge plus 12 percent and that the Associate Chief Judges continue to receive the puisne judge salary plus 6 percent.

The Association asks that the changes that have been made to these plans since 2004 be extended to the judges.

As with the pension issue, the Government argues that the terms of the judges' benefit plans should not be frozen from one commission to the next. Rather, the Government suggests that the judges should participate in their benefit plans in the same manner as other plan members. Under this proposal, any changes made by plan administrators would have immediate effect on the judges without the need for recourse to a commission.

## Vacation Entitlement

Judges of the Provincial Court of British Columbia currently receive 30 days of paid annual vacation. This figure does not include statutory holidays. The Association asks the Commission to recommend an increase in annual vacation to 40 days. The Government opposes any increase.

The Commission was advised that judges of the various provincial and territorial courts have the following vacation entitlements:

| Jurisdiction | Vacation Days Per Year |
|---|---|
| Ontario | 40 |
| Yukon | 35 |
| Northwest Territories | 31.5, 35, 40 (based on years of service) |
| British Columbia | 30 |
| Alberta | 30 |
| Saskatchewan | 30 |
| Manitoba | 30 |
| Quebec | 30 |
| New Brunswick | 30 |
| Prince Edward Island | 30 |
| Nova Scotia | 25, 30 (based on years of service) |
| Newfoundland and Labrador | 25 |

In any given year, half of the British Columbia Supreme Court Justices will be entitled to 5 weeks of holidays and the other half to 6 weeks of holidays. The Association invites the Commission to factor in the additional two weeks over the Christmas and New Years break during which the Supreme Court is not in session. During that period, the justices are not required to attend, with the exception of those justices on call. The result, says the Association, is that the total vacation time afforded to a Supreme Court Justice in British Columbia will alternate between 7 weeks (35 days) and 8 weeks (40 days) per year.

The Association suggests that an increase in vacation time from 30 to 40 days will assist in making the Provincial Court more attractive vis-à-vis the Supreme Court. The Chief Judge, citing the success of the Senior Judge Program, offers his observation that judges are able to approach their work with more energy and enthusiasm when they enjoy increased time off.

The Government proposes that vacation entitlement remain at 30 days per year in keeping with the majority of provincial courts in Canada.

## Costs

The question of who would bear the costs to the Association of participating in these proceedings has been resolved by the parties. The Commission sees no need to comment further on that issue.

## Recommendations

Having considered all of the foregoing, the Commission makes the following recommendations:

### 1) Salary

Judicial salaries must be set at a level that will continue to attract highly qualified lawyers from both the private bar and public service. British Columbians would not be well served by a Provincial Court that is being overlooked for financial reasons by those lawyers best suited for it. While the Commission does not recommend that the salaries of Provincial Court Judges be tied to those of Supreme Court Justices, the Commission does recognize the importance of setting Provincial Court salaries with a view to minimizing the wage disparity between the two courts.

Further, the remuneration of Provincial Court Judges in British Columbia should keep pace with that of other provinces. Given British Columbia's healthy financially outlook, the Commission sees no reason why the judges of this Province should not receive salaries in keeping with our relative economic position within the country.

Bearing all of these factors in mind, the Commission makes the following salary recommendations for puisne judges of the Provincial Court:

| | |
|---|---|
| April 1, 2008 – March 31, 2009 | $220,000 (an increase of 8.7%) |
| April 1, 2009 – March 31, 2010 | $225,500 (an increase of 2.5%) |
| April 1, 2010 – March 31, 2011 | $231,138 (an increase of 2.5%) |

The Commission recommends that the Chief Judge continue to receive a salary equivalent to that of a puisne judge plus 12 percent and that the Associate Chief Judges continue to receive the puisne judge salary plus 6 percent.

## 2) Pension and Benefit Plans

It is the view of the Commission that the principles of judicial independence require that any changes to the judges' Pension Plan must be considered by the Commission. One of the objectives of the Commission is to ensure that judicial compensation does not fall below a constitutionally acceptable level. The Pension Plan is a significant component of the judges' overall compensation. To allow changes to the Pension Plan to flow through automatically to the judges, as proposed by the Government, raises the spectre of a third party unilaterally reducing the judges' overall compensation below levels deemed acceptable by the Commission. For these reasons, the Commission affirms the recommendation of the 2004 Commission that any changes to the terms of the judges' Pension Plan must be considered by the Commission.

The Commission recognizes, on the other hand, that the trustees of the Pension Plan may make changes to the contribution rates during the currency of this Commission's recommendations. In the opinion of the Commission, the provisions of the Act that fix the contribution rates for the judges and the Government can be amended to anticipate such changes without compromising judicial independence. Section 18(1) of the Act stipulates that judges are to contribute 7% of their salary to the Pension Plan and that the Government is to contribute 22.2%. Thus, at the time that section 18(1) was enacted, it required contributions to the total premium cost of the Pension Plan (29.2% of salary in 2004) at a ratio of 24% from the judges and 76% from the Government. The Commission recommends that this ratio be fixed by statute, rather than fixing the actual contribution rates of each party as a percentage of salary.

Specifically, the Commission recommends that the current salary-based contribution rates in section 18(1) of the Act be replaced by provisions requiring the judges to contribute 24% of the total premium cost of the Pension Plan and the Government to contribute 76% of the total premium cost. As the total premium cost is presently 34.93% of salary, the application of the 24:76 ratio would result in the judges contributing 8.38% of their salary and the Government contributing 26.55%. Any future increases or decreases in the overall contribution premiums required by the trustees would apply automatically to the judges without the involvement of a compensation commission. The changes, however, would be borne proportionately by both parties according to the 24:76 ratio fixed by the Act.

All other changes to the terms or benefits of the Pension Plan will still require the prior consideration of a commission before applying to sitting judges. As before, changes to the Pension Plan benefits or rules for retired judges need not be vetted by a commission.

With respect to the judges' benefit plans, the Commission recommends that all changes made to the Extended Health Plan and Group Life Insurance Plan since 2004 be extended to the judges. The Commission does not intend to depart from the principle adopted by the 2004 Commission that no benefit, premium, fee or term of a benefit plan be changed without prior consideration by a commission.

The Commission recommends that the changes in this section be made effective April 1, 2008.

### 3) Vacation Entitlement

The Commission does not recommend a change to the vacation entitlement of Provincial Court Judges.

### 4) Professional Development Allowance

The Commission recommends that the following joint position of the Government and the Association be adopted:

- The total annual amount of the allowance per judge should be increased to $4000, with the ability to carry over any unused portion for one year.
- All of the allowance, including any portion carried over, may be used to cover reasonable expenses associated with the judge's attendance at courses, seminars or conferences, including travel and expenses incidental to attendance.
- In any year, up to $2500 of the allowance may be used for expenses reasonably incurred in the execution of the office of a judge. The administration of these funds shall be at the discretion of the Chief Judge, but the expenses must fall under one of the following categories:
    - home office supplies and equipment, including repair and maintenance;
    - cellular phones and personal digital assistant devices, including basic monthly charges, repair and maintenance;
    - internet access charges;
    - court attire in excess of that provided by the Court;
    - garment bags, computer bags and briefcases;
    - books, periodicals and subscriptions;
    - professional association membership dues;
    - attendance at functions to which the judge is invited by virtue of office, including meetings or dinners of the bar, funerals, memorial services and welcoming ceremonies (judges must obtain the prior approval of the Chief Judge); and
    - health club memberships or wellness related expenses, including home fitness equipment, to a maximum of $500 per year.

### 5) Senior Judges Program

Given the success of the Senior Judges program since its inception, the Commission recommends that the maximum length of participation in the program be extended from five to seven years.

### 6) Recruitment Incentive Program

The Commission considers it appropriate, if not helpful, to raise an issue ex mero motu that falls outside the issues raised by the parties. The Commission was informed that there are recruitment problems unique to particular locations within the province. These recruitment needs elude resolution because of an absence of qualified applicants willing to fill vacancies in certain jurisdictions. One such vacancy remained at the time of writing this report. The Commission discussed this vacancy informally with the Chief Judge and Associate Chief Judge Neal. The needs of the particular area are currently being met by members of the Court who volunteer for ad hoc assignments to that location.

In other professional settings, such recruitment issues are met by the courting of suitable applicants through incentives that are unique to particular vacancies. Incentive programs designed to attract qualified applicants are a common feature in Nunavut, the Northwest Territories and Yukon Territories. They include allowances that recognize the higher cost of travelling and other forms of living allowance.

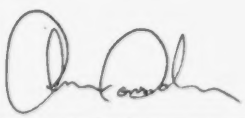
The understanding of the Commission is that the Judicial Council, as a matter of policy, and the Association, as a matter of principle, wish to maintain uniformity in salaries and benefits for members of the Court. For that reason, the use of increased salaries and benefits for particular vacancies has not been considered. In addition, the budget for the Court does not contemplate the payment of incentives calculated to offset the perceived disadvantages that render particular vacancies less desirable.

The Commission suggests that the Government consider providing discretionary funding to the Judicial Council to introduce an incentive program designed to meet these recruitment anomalies. The provision of funding as a budget allowance would continue to insulate the Court from the Government in the terms required to ensure judicial independence. It is not the intention of the Commission to advance a recommendation that binds the Government in the sense contemplated by *Bodner*. Rather, the Commission raises the issue to signal the need for the Government to pursue a solution in consultation with the Chief Judge and the Judicial Council.

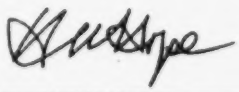
All of which is respectfully submitted.

2007 Judges Compensation Commission

Israel Chafetz, Q.C.



Christopher M. Considine, Q.C.



H. Allan Hope, Q.C.
Chair